

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

Energy Heating, LLC, an Idaho limited liability company; Rocky Mountain Oilfield Services, LLC, an Idaho limited liability company,

Plaintiffs,

vs.

Heat On-The-Fly, LLC, a Louisiana limited liability company, and Super Heaters North Dakota, LLC, a North Dakota limited liability company,

Defendants,

and

Heat On-The-Fly, LLC, a Louisiana limited liability company,

Third-Party Plaintiff,

vs.

Marathon Oil Corporation and Marathon Oil Company,

Third-Party Defendants.

Civil Case No. 4:13-cv-10

**ORDER ADOPTING REPORT AND  
RECOMMENDATION ON  
ATTORNEYS' FEES AND COSTS**

These proceedings on the plaintiffs' and third-party defendants' motions for awards of attorneys' fees and non-taxable costs pursuant to 35 U.S.C. § 285 is before the court following remand from the Court of Appeals for the Federal Circuit. The undersigned has received and reviewed a Report and Recommendation from the Honorable Alice R. Senechal, recommending that the undersigned enter judgment as follows: (1) Energy Heating, LLC and Rocky Mountain Oilfield Services, LLC (collectively "Energy Heating")

be awarded attorneys' fees in the amount of \$3,355,455.45 and non-taxable costs in the amount of \$134,415.68; and (2) Marathon Oil Corporation and Marathon Oil Company (collectively "Marathon") be awarded attorneys' fees in the amount of \$1,769,126.76 and costs in the amount of \$73,309.36.<sup>1</sup> Defendants Heat On-The-Fly, LLC and Super Heaters North Dakota (collectively "HOTF") have objected to the Report and Recommendation, asserting that the magistrate judge erred by awarding any amount of attorneys' fees and costs and, alternatively, erred by not further reducing the requested attorneys' fees and costs to account for "unreasonably high billing rates" and "inefficiencies."<sup>2</sup> Both Energy Heating and Marathon have filed responses to HOTF's objections.<sup>3</sup>

The undersigned has conducted a *de novo* review of the magistrate judge's proposed disposition and HOTF's objections. Upon careful review of the record as well as the decisions of the Federal Circuit, the court agrees with the magistrate judge's analyses and recommended dispositions on the pending motions. The court specifically finds no error in the magistrate judge's findings that Energy Heating and Marathon are entitled to an award of attorneys' fees and costs, no error in the magistrate judge's findings regarding the appropriate amount of the award, and no error in rejecting HOTF's arguments in light of the magistrate judge's consideration of the extensive record as a whole and her thorough analysis of the relevant factors. The court further finds that HOTF's supplemental materials<sup>4</sup> have not presented a basis to disturb the magistrate judge's findings.

<sup>1</sup>Doc. #777

<sup>2</sup>Doc. #784

<sup>3</sup>Docs. #787 & 788.

<sup>4</sup>Doc. #785

For the foregoing reasons, the undersigned hereby **ADOPTS** the magistrate judge's Report and Recommendation in its entirety. Marathon's motions for attorneys' fees and costs<sup>5</sup> are **GRANTED**. Marathon is hereby awarded attorneys' fees in the amount of \$1,769,126.76 and non-taxable costs in the amount of \$73,309.36. Energy Heating's motion for attorneys' fees and costs<sup>6</sup> is **GRANTED, in part**. Energy Heating is hereby awarded attorneys' fees in the amount of \$3,355,455.45 and non-taxable costs in the amount of \$134,415.68.

**IT IS SO ORDERED.**

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated this 15th day of June, 2020.

Sitting by designation:

/s/ Ralph R. Erickson  
Ralph R. Erickson, Circuit Judge  
Eighth Circuit Court of Appeals

---

<sup>5</sup>Docs. #736 & 763

<sup>6</sup>Doc. #738